IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 943 (MS) OF 2004

Harish Kumar Mahandiratla,
S/o Shri Lekh Raj Mehandiratla,
R/o Wing No. 3, Barrak No. 5/6, Prem Nagar,
Dehradun, District – Dehradun. .....Petitioner.

Versus

1. District Judge, Tehri Garhwal.
2. Collector/District Magistrate, Tehri Garhwal.

.....Respondents.

Dated: 10.05.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Ramji Srivastava, Advocate for the petitioner and Standing Counsel for the respondents no. 1 and 2.

By the present writ petition, the petitioner has prayed for a writ of certiorari calling for the record and setting aside the judgment and order dated 17th September, 2004 and 11.11.2003.

Briefly stated, according to the case of the petitioner, he is the owner of the Truck No. U.P.-08/H-1628. The police of Check Post Plasda, Police Station Narendra Nagar, District Tehri Garhwal took the vehicle in question in its possession showing that the illegal country made liquor was recovered from the vehicle in question in a routine checking on 16.03.2000.

The petitioner got the vehicle released from the Court of Chief Judicial Magistrate, Tehri Garhwal on furnishing a security of Rs. 1,25,000.00 in the form of bank guarantee/fixed deposit receipt and now the vehicle in

question is in possession of the petitioner and a criminal case No. 2 of 2000 State Vs. Harish Kumar Mehandiratla was registered in the Court of Collector/District Magistrate, Tehri Garhwal.

On 13th April, 2000, the District Mazgistrate, Tehri Garhwal issued a notice under Section 72 (5) of U.P. Excise Act to the petitioner directing him to appear in the Court and show cause as to why the vehicle in question be not seized in favour of the State of Uttaranchal. After receiving the notice dated 13.04.2000, the petitioner submitted his objection in the Court of Collector/District Magistrate, Tehri Garhwal on 30.06.2000. However, the Collector/District Magistrate passed the order seizing the vehicle and also imposed penalty of Rs. 2 lacs.

Aggrieved by the said order, the petitioner went in appeal. The appellate Court has also confirmed the said finding.

The short grievance of the petitioner is that before the Collector, he could not get an opportunity of leading evidence. A perusal of the order passed by the Collector shows to the following effect:-

"विपक्षीगण को साक्ष्य प्रस्तुत करने हेतु पर्याप्त अवसर प्रदान करने व अन्तिम अवसर दिये जाने के बावजूद साक्ष्य प्रस्तुत नहीं किया गया, जिससे साक्ष्य का अवसर समाप्त करते हुए उभय पक्षों के विद्वान अधिवक्ताओं की बहस सुनी गयी।"

In view of the aforesaid, since the petitioner has made a grievance that he could not get an opportunity to lead the evidence the Collector has proceeded ex parte. In view of the above, the Collector is directed to decide the case after hearing the petitioner.

As will appear from the order that the Truck in question has already been released in favour of the petitioner, the same shall remain in his possession and the fixed deposit made by

the petitioner shall be subject to the final order passed by the Collector.

The petitioner has also submitted that under Section 52 of the Excise Act, it is the duty of the Collector to issue search warrant before making any search in pursuance of the information received. He has submitted that in the present case, there has been a complete violation of Section 52 of the Excise Act and as such a great prejudice has been caused to the petitioner while proceeding with the hearing of the matter without ascertaining that there was any search warrant or not.

However, in view of the above, the matter is sent back to the Collector for deciding afresh after giving the opportunity to the petitioner to lead the evidence. The Collector shall also record a finding with regard to compliance of Section 52 of the Excise Act.

The Collector shall give an opportunity to both the parties to lead their evidence and shall decide the case within a period of six months.

In view of the above, writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

10.05.2006

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